UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GOLDBERG COHEN, LLP Plaintiff, v. LUV N' CARE, LTD. and ADMAR INTERNATIONAL, INC. Defendants.	Civil Action No. 16-cv-6576-NRB

RULE 56.1 STATEMENT OF MATERIAL FACTS

Pursuant to Local Civil Rule 56.1, Plaintiff hereby sets forth the following statement of material facts as to which Plaintiff contends there is no genuine issue to be tried.

1. Attached as Exhibit 1 to Plaintiff's Motion is a true and correct copy of an Agreement entered into between Plaintiff and Defendant on August 1, 2010. *See,* Exhibit 1; Declaration of Morris E. Cohen ("Cohen Declaration") ¶ 3.

2. Attached as Exhibit 2 to Plaintiff's Motion is a true and correct excerpted copy of Luv n' care's Motion for a Permanent Injunction and Memorandum of Law in Support dated March 22, 2013 and signed by Luv n' care's General Counsel Joseph D. Guerriero ("Jackel Brief"), in connection with *Luv n' care Ltd. v Jackel International Ltd.*, Docket No. 10-1891 (State of Louisiana, Parish of Ouachita, Fourth Judicial District Court) ("Jackel case"). *See,* Exhibit 2; Cohen Declaration ¶ 4.

3. Attached as Exhibit 3 to Plaintiff's Motion is a true and correct excerpted copy of the Petition (i.e. Complaint) filed by Luv n' care's General Counsel on or about May 24, 2010 to initiate the Jackel case. *See,* Exhibit 3; Cohen Declaration ¶ 5.

4. Attached as Exhibit 4 to Plaintiff's Motion is a true and correct copy of an "Amendment to Discovery" served by Joe. D. Guerriero of Luv n' care on Jackel's counsel in October 2010. *See,* Exhibit 4; Cohen Declaration ¶ 6.

5. Attached as Exhibit 5 to Plaintiff's Motion is a true and correct copy of the judgment filed May 22, 2013, and entered in the Jackel case. *See,* Exhibit 5; Cohen Declaration ¶ 7.

6. Attached as Exhibit 7 to Plaintiff's Motion are true and correct copies of an appellate decision in an appeal handled by Plaintiff GC in the Jackel case. *See,* Exhibit 7; Cohen Declaration ¶ 8.

7. Attached as Exhibit 8 to Plaintiff's Motion is a true and correct copy of a brief prepared by Plaintiff GC in an appeal to the Supreme Court of Louisiana in the Jackel case. *See,* Exhibit 8; Cohen Declaration ¶ 9.

8. Attached as Exhibit 9 to Plaintiff's Motion are true and correct copy of decisions entered by the Supreme Court of Louisiana in appeals in the Jackel case. *See,* Exhibit 9; Cohen Declaration ¶ 10.

9. Attached as Exhibit 10 to Plaintiff's Motion is a true and correct copy of an appeal filed by Jackel in the Jackel case, which was being defended against by Plaintiff GC. *See,* Exhibit 10; Cohen Declaration ¶ 11.

10. Attached as Exhibit 11 to Plaintiff's Motion is a true and correct copy of an appeal filed by LNC in the Jackel case, which was being handled by Plaintiff GC. *See,* Exhibit 11; Cohen Declaration ¶ 12.

11. Attached as Exhibit 12 to Plaintiff's Motion is a true and correct copy of a Declaration and exhibits (excerpted) of James Grant, counsel to Jackel in the Jackel case, filed in the

case of *Luv n' care, Ltd. and Admar International,, Inc. v. Jackel International Limited and Mayborn USA, Inc.,* 2:14-cv-00855-JRG (E.D. Texas) ("the Texas case'). *See,* Exhibit 12; Cohen Declaration ¶ 13.

12. Attached as Exhibit 13 to Plaintiff's Motion is a true and correct copy of an Opposition to Motion to Dismiss and exhibits (excerpted) filed by Luv n' care in the Texas case, and signed by Luv n' care's in-house IP Litigation Counsel. *See,* Exhibit 13.

13. Attached as Exhibit 14 to Plaintiff's Motion is a demonstrative exhibit bringing together true and correct copies of documents each labeled "Exhibit 6" from Exhibits 3, 4, and 13 above. *See,* Exhibit 14; Cohen Declaration ¶ 15.

14. Attached as Exhibit 15 to Plaintiff's Motion is a true and correct copy of a Memorandum and Order issued by the Court in the Texas case (Dkt. 95). *See,* Exhibit 15 Cohen Declaration ¶ 16.

15. Attached as Exhibit 16 to Plaintiff's Motion is a true and correct copy of a transcript from the pre-motion conference held on January 19, 2017 in the present case. *See,* Exhibit 16; Cohen Declaration ¶ 17.

16. Attached as Exhibit 17 to Plaintiff's Motion is a spreadsheet that accurately lists the weekly payments by LNC to GC from after March 22, 2013 until LNC ceased making those payments, and further including an accurate monthly summary of the same, and accurate calculations as to the same. *See,* Exhibit 17; Cohen Declaration ¶ 18.

17. In connection with the Jackel case, once the case was settled Jackel sent its settlement payment to GC. Upon discussions between LNC and GC, LNC consented to release to GC a contingency fee of 15% after deduction of LNC's costs, but refused to pay GC a

contingency fee of 20%. Cohen Declaration ¶ 19; Declaration of Lee A. Goldberg ("Goldberg Declaration") ¶ 3.

18. A payment of 15% for a contingency fee was released by LNC in December 2013. The disputed 5% of the contingency fee is $80,000, which amount was placed by GC in its escrow account pending resolution of the dispute between GC and LNC. Cohen Declaration ¶ 18; Goldberg Declaration ¶ 4.

Dated: March 21, 2017

/s/ Morris E. Cohen

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